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kwright@consumerlawcenter.com

Attorneys for Plaintiff,

JAYNE BARUCH

FILED

FEB 1 6 2010

CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY DEPUTY

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA SAN DIEGO DIVISION

Plaintiff,

Plaintiff,

Complaint And Demand For JURY TRIAL

v.

ESTATE RECOVERIES, INC.,

Defendant.

Case Not 0 CV 0 370 W

Complaint And Demand For JURY TRIAL

(Unlawful Debt Collection Practices)

# **VERIFIED COMPLAINT**

JAYNE BARUCH (Plaintiff), by her attorneys, KROHN & MOSS, LTD., alleges the following against ESTATE RECOVERIES, INC., (Defendant):

#### **INTRODUCTION**

- Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
   U.S.C. 1692 et seq. (FDCPA).
- 2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 et seq. (RFDCPA).

### JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court

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- without regard to the amount in controversy," and 28 U.S.C. 1367 grants this court supplemental jurisdiction over the state claims contained therein.
- 4. Defendant conducts business in the state of California, and therefore, personal jurisdiction is established.
- 5. Venue is proper pursuant to 28 U.S.C. 1391(b)(2).
- 6. Declaratory relief is available pursuant to 28 U.S.C. 2201 and 2202.

### **PARTIES**

- 7. Plaintiff is a natural person residing in San Diego, County of San Diego, California.
- 8. Plaintiff is a consumer as that term is defined by 15 U.S.C. 1692a(3), and according to Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 U.S.C. 1692a(5) and Cal. Civ. Code § 1788.2(h).
- 9. Defendant is a debt collector as that term is defined by 15 U.S.C. 1692a(6) and Cal. Civ. Code §1788.2(c), and sought to collect a consumer debt from Plaintiff.
- 10. Defendant is a company located in Middle River, Baltimore County, Maryland.
- 11. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

#### **FACTUAL ALLEGATIONS**

- 12. Defendant constantly and continuously places collection calls to Plaintiff seeking and demanding payment for an alleged debt owed by her deceased father, Herbert M. Law (see transcribed voicemail messages attached as Exhibit A and photos of Plaintiff's caller ID attached as group Exhibit B).
- 13. Defendant sent Plaintiff a letter requesting payment for an alleged debt owed by Plaintiff's father (see letter dated January 19, 2010 attached as Exhibit C).
- 14. Plaintiff's deceased father was survived by his wife, Rose Marie Law, Plaintiff's step-

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mother, and Plaintiff.

- 15. Plaintiff's uncle, David Law, was the executor of Plaintiff's father's estate, not Plaintiff.
- 16. Plaintiff is not legally responsible for her deceased father's estate.
- 17. Defendant contacted Plaintiff at 858-552-0244.
- 18. Defendant contacted Plaintiff from 866-537-3179 and 443-615-7400 (see group Exhibit B).
- 19. Defendant's representative "Tina Jones" calls Plaintiff and indicates that the call is from a legal department (see group Exhibit A).
- 20. Defendant's representative "Tina Jones" called Plaintiff and stated that there is a will that indicates Plaintiff is responsible for her father's bills (see group Exhibit A).
- 21. Defendant's representative "Tina Jones" called Plaintiff and failed to disclose that the call was from a debt collector (see Exhibit A).
- 22. On January 15, 2010, Defendant called Plaintiff at 7:51 a.m. PST (see group Exhibit B).
- 23. On January 19, 2010, Defendant called Plaintiff at 6:35 a.m. PST (see group Exhibit B).
- 24. On January 21, 2010, Defendant called Plaintiff at 7:42 a.m. PST (see group Exhibit B).
- 25. The letter sent to Plaintiff on January 19, 2009 fails to provide appropriate notice of the debt (see Exhibit C).

# COUNT I DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

- 26. Defendant violated the FDCPA based on the following:
  - a. Defendant violated §1692c(a)(1) of the FDCPA by contacting Plaintiff before
     8:00 a.m., local time at her location, a time known to be inconvenient for communicating with a consumer.
  - b. Defendant violated  $\S1692d(5)$  of the FDCPA by causing a telephone to ring repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff.

- c. Defendant violated §1692e(2)(A) of the FDCPA by falsely representing the legal status of a debt because Defendant's representative indicated that Plaintiff is responsible for her deceased father's bills based on a registered will that Plaintiff has no knowledge of.
- d. Defendant violated §1692e(10) of the FDCPA by using deceptive means in an attempt to collect a debt because Defendant's representative indicated that Plaintiff is responsible for her deceased father's bills based on a registered will that Plaintiff has no knowledge of.
- e. Defendant violated §1692e(10) of the FDCPA by using deceptive means in an attempt to collect a debt because Defendant called Plaintiff and stated that the call was from a legal department.
- f. Defendant violated §1692e(11) of the FDCPA by failing to disclose in the initial communication and in subsequent communications that the communication was from a debt collector.
- g. Defendant violated §1692f of the FDCPA by engaging in unfair and unconscionable means to collect a debt.
- h. Defendant violated  $\S1692g(a)(1-5)$  by failing to provide appropriate notice of the debt within 5 days after the initial communication including: (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed; (3) a statement that unless the consumer, within 30 days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; (4) a statement that if the consumer notifies the debt collector in writing within the 30-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will

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be mailed to the consumer by the debt collector; and (5) a statement that, upon the consumer's written request within the 30-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

WHEREFORE, JAYNE BARUCH, respectfully requests judgment be entered against Defendant, ESTATE RECOVERIES, INC., for the following:

- 27. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection Practices Act,
- 28. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k,
- 29. Actual damages,
- 30. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k
- 31. Any other relief that this Honorable Court deems appropriate.

# COUNT II DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

- 32. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.
- 33. Defendant violated the RFDCPA based on the following:
  - a. Defendant violated §1788.11(d) of the RFDCPA by causing Plaintiff's telephone to ring repeatedly and continuously so as to annoy Plaintiff.
    - b. Defendant violated §1788.11(e) of the RFDCPA by placing collection calls to Plaintiff with such frequency that was unreasonable and constituted harassment.
    - c. Defendant violated the §1788.17 of the RFDCPA by continuously failing to comply with the statutory regulations contained within the FDCPA, 15 U.S.C. §

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1692 et seq.

WHEREFORE, Plaintiff, JAYNE BARUCH, respectfully requests judgment be entered against Defendant, ESTATE RECOVERIES, INC., for the following:

- 34. Declaratory judgment that Defendant's conduct violated the Rosenthal Fair Debt Collection Practices Act,
- 35. Statutory damages of \$1,000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788.30(b),
- 36. Actual damages,

DATED: January 28, 2010

- 37. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices Act, Cal. Civ Code § 1788.30(c), and
- 38. Any other relief that this Honorable Court deems appropriate.

# **DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, JAYNE BARUCH, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

KROHN & MOSS, LTD.

By: \_\_\_\_

Kimberly A. Wright Attorney for Plaintiff

# **VERIFICATION OF COMPLAINT AND CERTIFICATION**

# STATE OF CALIFORNIA

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Plaintiff, JAYNE BARUCH, states as follows:

- 1. I am the Plaintiff in this civil proceeding.
- 2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
- 3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
- 4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
- 5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
- 6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
- 7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, JAYNE BARUCH, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

DATE: 1-27-10

Jayne Baruch

**EXHIBIT A** 

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# JAYNE BARUCH v. ESTATE RECOVERY, INC.

Jayne Baruch, this is Tina Jones with Estate Recovery's legal department. My number is 1-866-537-3179. My direct extension is 7528. It is very important that we hear from you. I will be leaving in 30 minutes. I was informed you yesterday I am leaving early today and it is very important that I speak with you concerning this. Again my number is 1-866-537-3179. My direct extension 7528. There is a will that is registered and states that you are liable to pay these bills plus the funeral. Both Visa bills with the Bank of America, so please contact me ma'am. Thank you.

Received at 7:57 a.m. on Friday, January 15, 2010:

Ms. Jayne Baruch. It's very important ma'am that I speak with you and I think that you are ignoring this. If you are I believe the only other solution is to the Rockingham County courthouse proceedings because you ... I have shown documents ... I do have a document stating that you should have paid these and I don't understand what you [answering machine ends call].

EXHIBIT B

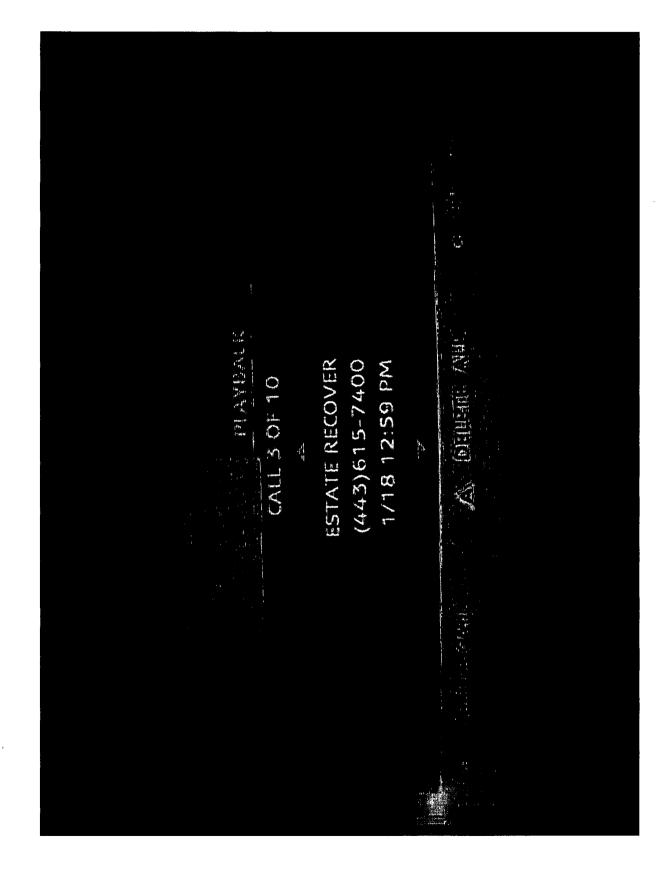
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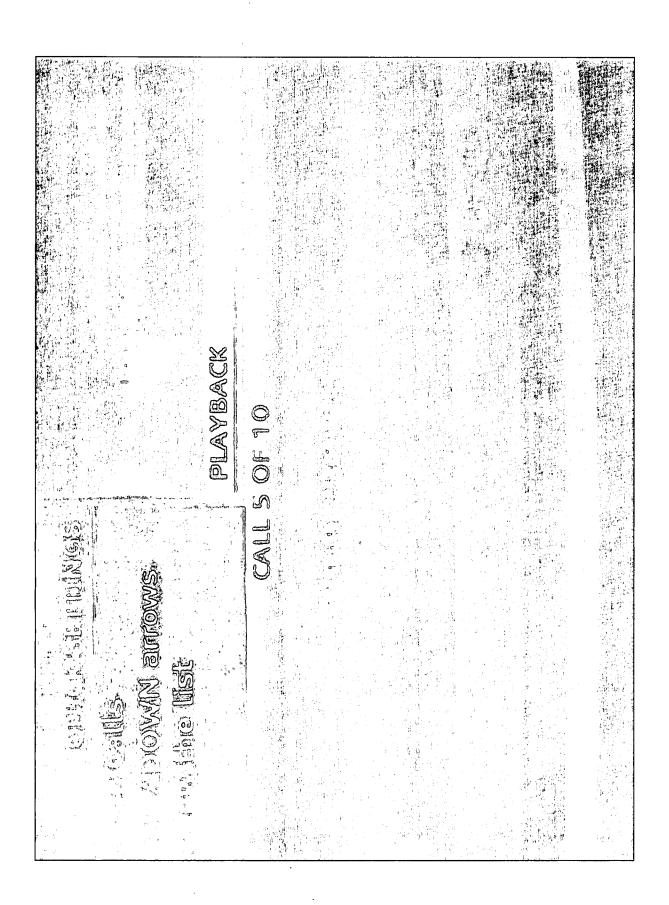
OLHOBIN

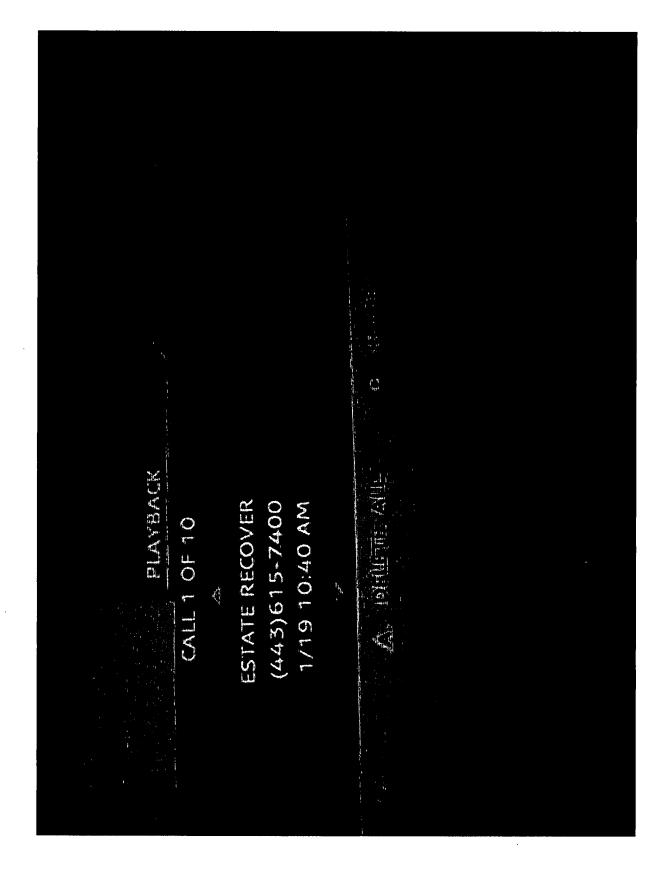
ESTATE RECOVER (443)615-7400 1/14 2:28 PM

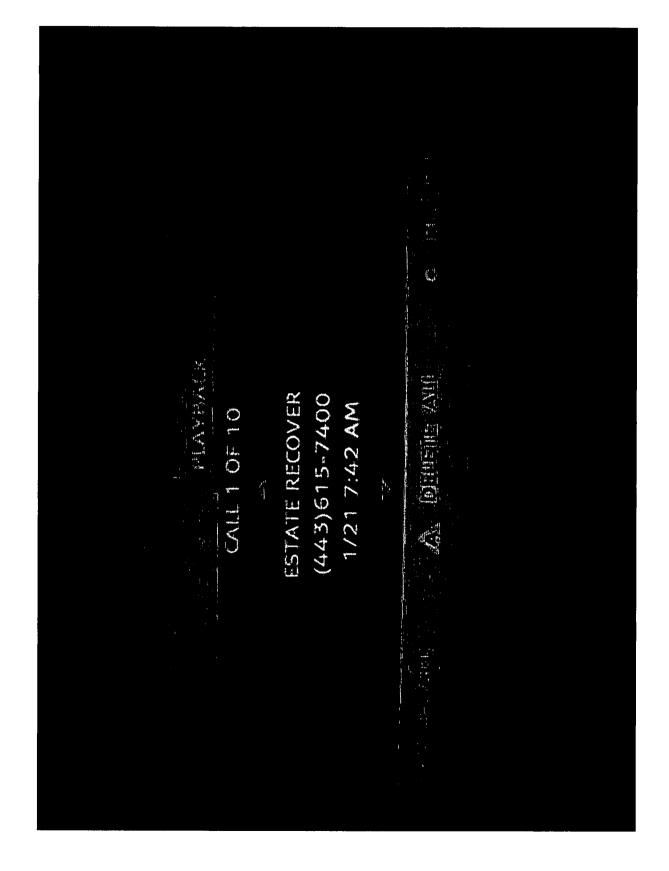
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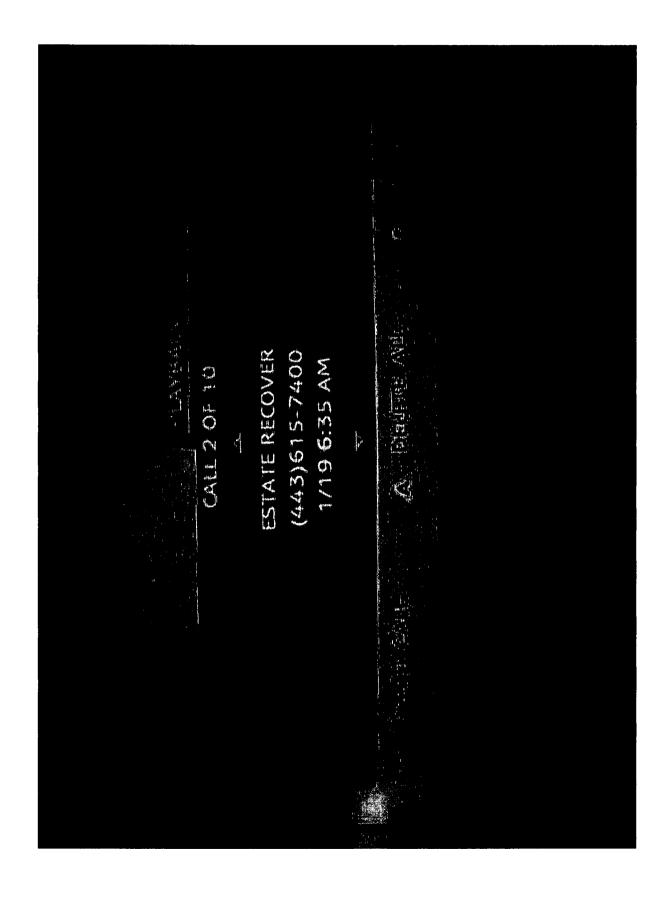
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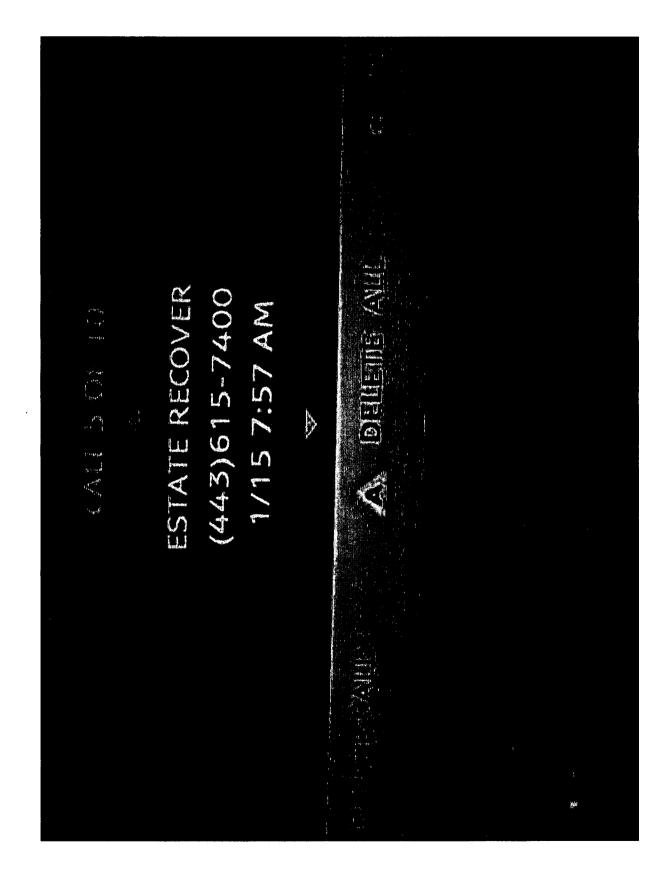












**EXHIBIT C** 

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PLAINTIFF'S COMPLAINT



DO NOT SEND PAYMENTS OR CORRESPONDENCE TO THIS ADDRESS

20432-16

Department # 6129 P.O. Box 1259 Oaks, PA 19456



Office Hours (Eastern Time)

M - Th: 9:00am - 9:00pm -- Fri: 9am - 5pm

1-866-537-3179 Fax: 443-451-2701

IDENTIFYING INFORMATION $\checkmark$					
Estate Recoveries Inc. File No.:	BOFA00000026930				
Creditor Account Number:	4888931996319708				
Creditor:	Bank of America HERBERT M LAW				
Estate of:					
ACCOUNT BALANCE:	\$11783.85				

Estate Of Herbert M Law c/o Janie Baruch 5905 Agee St San Diego, CA 92122-3714

January 19, 2010

Dear Sir/Madam:

The account balance is shown above. If you would like to set up a payment plan, or further discuss this account, please contact our office at 1-866-537-3179. Please send all payments to ERI with the remittance slip found at the bottom of this letter. To ensure proper posting, please write the ERI File Number on your check or money order.

If you have any questions, feel free to contact our office.

Sincerely,

Estate Recoveries, Inc.

#### NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Estate Of Herbert M Law c/o Janie Baruch 5905 Agee St San Diego, CA 92122-3714

IDENTIFYING	INFORMATION
Estate Recoveries Inc. File No.:	BOFA00000026930
Creditor Account Number:	4888931996319708
Creditor:	Bank of America
ACCOUNT BALANCE:	\$11783.85



Make Check Payable To

Estate Recoveries, Inc. P.O. Box 15380
Baltimore, MD 21220

Jan 25 10 03:28 ase 3:10-cv-00370-W -WVG Document 1 Filed 02/16/51/028 age 20 of 22.1

Special State Disclosure

#### California

"The state Rosenthal Fair Debt Collection Practices Act and the Federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 am or after 9 pm. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have a reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov."

For Medical Collections on behalf of a hospital: "Nonprofit credit counseling service may be available in the area."

Federal Statutes view this letter as communication under the provisions of the Federal Fair Debt Collection Practices Act. We are required by law to provide you with the following notice:

This communication is from a debt collector and is an attempt to collect a debt, any information obtained will be used for that purpose.

athin bort of

Plaintiff

☐ 110 Insurance

☐ 130 Miller Act

☐ 196 Franchise

☐ 120 Marine

•		Remanded from	4 Reinstated or   Reopened	5 Transferred fro another district (specify)		Appeal to District Judge from Magistrate Judgment
VI. CAUSE OF ACTION	Cite the U.S. Civil Sta 15 USC 1692 e Brief description of ca	tute under which you are I Seq.	filing (Do not cite j	urisdictional statute	s unless diversity):	
	Unlawful and at	ousive debt collecti	on practices			
VII. REQUESTED IN COMPLAINT:	CHECK IF THIS UNDER F.R.C.P.	IS A CLASS ACTION 23	DEMAND \$		CHECK YES only if of JURY DEMAND:	demanded in complaint:    ✓ Yes □ No
VIII. RELATED CASE(S IF ANY	(See instructions):	JUDGE		DOC	KET NUMBER	
DATE 01/28/2010		SIGNATURE OF ATTO	PRINEY OF RECORD			
FOR OFFICE USE ONLY  RECEIPT # 1028 AMOU	-025¢_ <sub>TML</sub>	APPLYING IFP		JUDGE	. MAG. JUDGI	Е
· / PB	02-17-10					

Court Name: USDC California Southern

Division: 3

Receipt Number: CAS010286

Cashier ID: mbain

Transaction Date: 02/17/2010 Payer Name: KROHN AND MOSS

CIVIL FILING FEE

For: BARUCH V ESTATE RECOVERIES
Case/Party: D-CAS-3-10-CV-000370-001

Amount: \$350.00

CHECK

Check/Money Order Num: 20744

Amt Tendered: \$350.00

Total Due: \$350.00 Total Tendered: \$350.00

Change Amt: \$0.00

There will be a fee of \$45.00 charged for any returned check.